

FEDERAL DEFENDANTS' EXHIBIT E

Wagner v. U.S. Dep't of Energy
Civil No. 08-00136-HG-KSC (D. Haw.)

FILED

MAY 22 2000

**RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

WALTER L. WAGNER,

No. C99-02226 MMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
REQUEST TO FILE A FIRST AMENDED
COMPLAINT; DENYING PLAINTIFF'S
MOTION TO RECONSIDER DENIAL OF
TEMPORARY RESTRAINING ORDER**

v.

U.S. DEPT OF ENERGY,

Defendant.

The Court is in receipt of plaintiff's motion, filed May 8, 2000, entitled: "Motion for Leave to Amend Complaint and to Issue Temporary Restraining Order."

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend his pleading once as a matter of course at any time prior to the answer being served. As no answer has yet been served, plaintiff is entitled to amend his complaint as a matter of course. Accordingly, plaintiff's request to file a first amended complaint is GRANTED.

The Court construes plaintiff's motion for a temporary restraining order as a motion to reconsider the Court's June 11, 1999 order denying plaintiff's request for a temporary restraining order. As such, this is plaintiff's third attempt to have the Court reconsider that order. On June 17, 1999, plaintiff filed a motion for reconsideration, which the Court denied on June 22, 1999 on the ground that plaintiff failed to comply with Civil Local Rule 7-9(a), which requires a party to obtain leave of Court prior to filing a motion for reconsideration.

Thereafter, on June 28, 1999, plaintiff filed an ex parte motion for leave to file a motion for reconsideration. On July 1, 1999, the Court denied the ex parte motion on the ground that plaintiff failed to meet the requirements of Civil Local Rule 7-9(b).

United States District Court

For the Northern District of California

COPIES MAILED TO
PARTIES OF RECORD

1 As the Court noted in its orders of June 22, 1999 and July 1, 1999:

2 "Local Rule 7-9(b) requires that a movant demonstrate a material difference
3 in law or fact and that in the exercise of reasonable diligence the movant did
4 not know such fact or law at the time of the order. Assuming arguendo that
any of the facts to which plaintiff directs the Court's attention are 'new,'
plaintiff fails to demonstrate the requisite reasonable diligence."


5 Here, once again, plaintiff has failed to file a request pursuant to Civil Local Rule 7-9(a).¹

6 Moreover, as in plaintiff's previous attempts to have the Court reconsider its June 11, 1999
7 order denying issuance of a temporary restraining order, plaintiff has failed to demonstrate
8 a material difference in law or fact that, in the exercise of reasonable diligence, he did not
9 know at the time of that order.

10 Accordingly, plaintiff's motion for reconsideration is hereby DENIED.

11 IT IS SO ORDERED.

12 Dated: MAY 22 2000

13 
14 MAXINE M. CHESNEY
United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28 ¹Plaintiff's filing of an amended complaint does not affect plaintiff's obligations under Civil Local Rule 7-9.